

## TITLE 22. EXAMINING BOARDS

### Part VII. State Committee of Examiners In The Fitting And Dispensing Of Hearing Instruments

#### Chapter 141. Fitting And Dispensing Of Hearing Instruments

Amendments §§141.2, 141.6, 141.8, 141.10, 141.13, 141.16, and 141.20

#### PROPOSED PREAMBLE

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) proposes amendments to §§141.2, 141.6, 141.8, 141.10, 141.13, 141.16, and 141.20, concerning the licensure and regulation of fitters and dispensers of hearing instruments. Specifically, the amendments cover application procedures; increase in continuing education sponsor fee; amend language for obtaining an apprentice permit; add language for applicants applying for reciprocity; biannual renewals; amend language for a hearing test done in a stationary acoustical enclosure; delete the word “settlement” in an informal disposition; and replace “executive director” with “complaints subcommittee”. The licensing fee amendments are required as a result of revisions to the Health and Safety Code, Chapter 12, Sections 12.0111 and 12.0112, pursuant to House Bill 2292, 78<sup>th</sup> Legislature, 2003.

Pam K. Kaderka, Executive Director of the committee, has determined that for each of the first five year period the sections are in effect, there will be an impact on state government as a result of enforcing or administering the sections proposed. There will be a an increase in general revenue to the state estimated to be \$700.00 in Fiscal year 2004, \$1900 in Fiscal Year 2005, \$1900 in Fiscal Year 2006, \$1900 in Fiscal Year 2007 and \$1900 in Fiscal Year 2008. There will be no fiscal implications for local government. Senate Bill 1152, 78<sup>th</sup> Legislature, Regular Session, directs all departments administered licensing programs to participate in Texas Online, an electronic fee payment system developed and maintained by the Texas Online Authority. Wording is added that authorizes the Committee to collect subscription and convenience fees, in amounts to be determined by the Texas Online Authority, to recover costs associated with application and renewal application processing.

Ms. Kaderka has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of enforcing or administering the sections will be to insure the appropriate regulation of fitters and dispensers of hearing instruments. There is not anticipated cost to micro business or small business, or person who are required to comply with the sections as proposed. Continuing education sponsors will have to pay an extra \$100 annually. There is no anticipated impact on local employment or persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pam K. Kaderka, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new sections are adopted under Texas Occupations Code, Chapter 402, which requires the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health; and the Health and Safety Code, §12.001, that are reasonably necessary to properly perform its duties under this Act.

The amendments affect the Texas Occupations Code, Chapter 402.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

**[Bold and Bracket]** = Current language proposed for deletion

Regular Print = Current Language

(No Change.) = No changes are being considered for the designated subdivision

§141.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (25) (No change.)

(26) Supervisor - A supervisor is a person licensed by the committee as a licensed hearing instrument dispenser who:

(A) - (B) (No change.)

(C) is responsible for direct and indirect supervision and available for consultation and education of a temporary training permit holder[;] and/or is responsible for indirect supervision and available for consultation of an apprentice permit holder.

**[(D) is responsible for indirect supervision and available for consultation of an apprentice permit holder.]**

(27) - (30) (No change.)

§141.6. Application Procedures.

(a) - (d) (No change.)

(e) For all applications and renewal applications, the committee is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(f) For all applications and renewal applications, the committee is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(g) **[(e)]** The fees for administering Texas Occupations Code, Chapter 402, (Act), and this chapter shall be as follows:

(1) temporary training permit - \$200;

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- (2) examination fee - \$250;
- (3) apprentice permit - \$200;
- (4) licensure fee - \$200;
- (5) a license issued for a one-year term - \$200;
- (6) a license issued for a two-year term - \$400;

**[(5) licensure renewal fee - \$200;]**

(7) [(6)] duplicate document fee - \$25;

(8) [(7)] continuing education sponsor fee - \$600 **[\$500]** annually;

(9) [(8)] reinstatement fee for a license that was suspended for failure to pay child support - \$50; and

(10) [(9)] reinstatement fee for a license that was suspended for student loan default - \$50.

§141.8. Issuance of Permits.

(a) (No change.)

(b) Apprentice permit.

(1) The [A temporary training permit] holder of a current or expired temporary training permit, who has completed the directly supervised practicum requirements, taken all parts of the examination given by the committee and has passed all parts of the examination within the previous twelve months with a score of 70% or greater shall be issued an apprentice permit to fit and dispense hearing instruments. An apprentice permit remains valid for one year unless it is extended by the committee for an additional period not to exceed six months.

(2) - (11) (No change.)

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) (No change.)

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(2) A supervisor may delegate training activities to another eligible licensee **[supervisor]** for the training **[supervision]** of a temporary training permit holder. The supervisor shall be responsible for the day-to-day supervision of a trainee. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

§141.10. Reciprocity.

(a) In determining whether the licensing requirements of another jurisdiction are equivalent to or higher than Texas, the following criteria shall be considered by the committee:

- (1) written examination;
- (2) practical examination;
- (3) temporary training permit; and
- (4) apprentice permit.

(b) If an applicant for reciprocity is currently licensed as a fitter and dispenser of hearing instruments in another state, has practiced in that state for two years or more, and is currently certified by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS), the applicant may obtain an apprentice permit by submitting to examination and complying with the requirements and procedures for obtaining an apprentice permit set out in this chapter, excluding the temporary training permit requirements.

§141.13. Renewal of License.

(a) General.

(1) A regular license must be renewed annually or biannually, as determined by the committee.

(2) - (10) (No change.)

(b) (No change.)

(c) License renewal.

(1) - (11) (No change.)

(12) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain an apprentice permit **[a new license]** by

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submitting to re-examination and complying with the requirements and procedures for obtaining an apprentice permit **[original license]** set out in this chapter, excluding the temporary training permit requirements.

(13) - (16) (No change.)

§141.16. Conditions of Sale.

(a) - (f) (No change.)

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) (No change.)

(2) Ambient noise level of location audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) (No change.)

(B) model and serial number of equipment used to determine ambient noise level; and

(C) the ambient noise level of the test environment. **[date of last calibration of equipment used to determine ambient noise level; and]**

**[(D) the ambient noise level of the test environment.]**

(3) (No change.)

(h) (No change.)

§141.20. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal **[settlement]** conference held to determine whether an agreed **[settlement]** order may be approved.

(b) If the **[executive director or the]** Complaints Subcommittee of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this chapter

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shall apply. A licensee or applicant may request an informal **[settlement]** conference; however, the decision to hold a conference shall be made by the **[executive director or the]** complaints subcommittee.

(c) An informal **[settlement]** conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the informal **[settlement]** conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the conference by certified mail, return receipt requested, to the last known address of the licensee or applicant or by personal delivery. The 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10 day notice requirement.

(e) A copy of the committee's rules concerning informal disposition shall be enclosed with the notice of the informal **[settlement]** conference. The notice shall inform the licensee or applicant of the following:

(1) - (6) (No change.)

(7) that the complainant and any client involved in the alleged violations may be present. **[; and]**

**[(8) that the settlement conference will be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.]**

(f) The notice of the informal **[settlement]** conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the informal **[settlement]** conference. The complainant shall be notified if the conference is canceled.

(g) Members **[One member]** of the complaints subcommittee may be present at an informal **[a settlement]** conference.

(h) The **[settlement]** conference shall be informal and shall not follow the procedures established in this section for contested cases and formal hearings.

(i) (No change.)

(j) The committee's legal counsel shall attend each informal **[settlement]** conference.

(k) - (l) (No change.)

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(m) The complaints subcommittee [**member or the executive director**] shall exclude from the informal [**settlement**] conference all persons except witnesses during their testimony, the licensee or applicant, the licensee's or applicant's attorney, and the committee staff.

(n) The complainant shall not be considered a party in the informal [**settlement**] conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal [**settlement**] conference, the complaints subcommittee [**member or executive director**] may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments Act (Act). The committee [**member**] may also conclude that the committee lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(p) The licensee or applicant may either accept or reject the conference [**settlement**] recommendations at the conference. If the recommendations are accepted, an agreed [**settlement**] order shall be prepared by the committee office or the committee's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the committee office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(q) If the licensee or applicant rejects the proposed recommendations [**settlement**], the matter shall be referred to the complaints subcommittee [**executive director**] for appropriate action.

(r) - (s) (No change.)

(t) Upon an affirmative majority vote, the committee shall enter an agreed order approving the accepted [**settlement**] recommendations. The committee may not change the terms of a proposed order and shall only approve or disapprove an agreed order if the licensee or applicant is present at the committee meeting and agrees to other terms proposed by the committee.

(u) If the committee does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the complaints subcommittee [**executive director**] for other appropriate action.

(v) - (w) (No change.)